

Mollohan	Roemer	Stenholm
Moore	Rogers (KY)	Strickland
Moran (KS)	Rogers (MI)	Stump
Moran (VA)	Rohrabacher	Sununu
Morella	Ros-Lehtinen	Sweeney
Murtha	Ross	Tancredo
Myrick	Rothman	Tanner
Napolitano	Roukema	Tauscher
Nethercutt	Roybal-Allard	Tauzin
Ney	Royce	Taylor (MS)
Northup	Ryan (WI)	Taylor (NC)
Norwood	Ryun (KS)	Terry
Nussle	Sanchez	Thomas
Ortiz	Sandlin	Thompson (MS)
Osborne	Saxton	Thornberry
Ose	Schaffer	Thune
Otter	Schrock	Thurman
Oxley	Scott	Tiahrt
Pallone	Sensenbrenner	Tiberi
Pascarell	Serrano	Toomey
Pence	Sessions	Traffant
Peterson (MN)	Shadegg	Turner
Peterson (PA)	Shaw	Upton
Petri	Shays	Walden
Phelps	Sherman	Walsh
Pickering	Sherwood	Wamp
Pitts	Shimkus	Watts (OK)
Platts	Shows	Waxman
Pombo	Shuster	Weldon (FL)
Pomeroy	Simmons	Weldon (PA)
Portman	Simpson	Weller
Price (NC)	Skeen	Wexler
Pryce (OH)	Skelton	Whitfield
Quinn	Smith (MI)	Wicker
Radanovich	Smith (NJ)	Wilson
Rahall	Smith (TX)	Wolf
Ramstad	Smith (WA)	Wu
Regula	Snyder	Young (AK)
Rehberg	Souder	Young (FL)
Reynolds	Spratt	
Rodriguez	Stearns	

## NAYS—77

Ackerman	Hoekstra	Oberstar
Allen	Holt	Olver
Baird	Honda	Pastor
Baldacci	Jackson (IL)	Paul
Baldwin	Jones (OH)	Payne
Barrett	Kaptur	Rangel
Blumenauer	Kilpatrick	Rivers
Bonior	Kucinich	Rush
Brown (FL)	LaFalce	Sabo
Brown (OH)	Larsen (WA)	Sawyer
Capuano	Lee	Schakowsky
Cardin	Levin	Slaughter
Clay	Lewis (GA)	Solis
Clayton	Luther	Stark
Clyburn	Markey	Stupak
Conyers	McCarthy (MO)	Thompson (CA)
Davis (IL)	McCollum	Tierney
Doggett	McDermott	Udall (NM)
Eshoo	McGovern	Velazquez
Farr	McKinney	Visclosky
Filner	Meehan	Watson (CA)
Frank	Meek (FL)	Watt (NC)
Gutierrez	Meeks (NY)	Weiner
Hastings (FL)	Miller, George	Woolsey
Hilliard	Nadler	Wynn
Hinchev	Neal	

## ANSWERED "PRESENT"—6

Crowley	Jackson-Lee	Pelosi
DeFazio	(TX)	
Dingell	Obey	

## NOT VOTING—29

Berman	Hostettler	Sanders
Bishop	Israel	Scarborough
Bryant	Jefferson	Schiff
Burr	Klecza	Spence
Coyne	LaTourette	Towns
DeGette	McInnis	Udall (CO)
Delahunt	Owens	Vitter
Gephardt	Putnam	Waters
Harman	Reyes	Watkins (OK)
Herger	Riley	

□ 1240

So, (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

# CONSTITUTIONAL AMENDMENT AUTHORIZING CONGRESS TO PROHIBIT PHYSICAL DESECRATION OF THE FLAG OF THE UNITED STATES

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 189, I call up the joint resolution (H.J. Res. 36) proposing an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States, and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to House Resolution 189, the joint resolution is considered read for amendment.

The text of House Joint Resolution 36 is as follows:

## H.J. RES. 36

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein),*

## SECTION 1. CONSTITUTIONAL AMENDMENT.

The following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

## "ARTICLE —

"The Congress shall have power to prohibit the physical desecration of the flag of the United States."

The SPEAKER pro tempore. After two hours of debate on the joint resolution, it shall be in order to consider an amendment in the nature of a substitute, if offered by the gentleman from Michigan (Mr. CONYERS), or his designee, which shall be considered read and debatable for 1 hour, equally divided and controlled by the proponent and an opponent.

The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 1 hour of debate on the joint resolution.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

## GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.J. Res. 36.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, House Joint Resolution 36 proposes to amend the United States Constitution to allow Congress to prohibit the physical desecration of the flag of the United States. The proposed amendment reads, "The Congress shall have power to prohibit the physical desecration of the flag of the United States."

The amendment itself does not prohibit flag desecration; it merely empowers Congress to enact legislation to prohibit the physical desecration of the flag and establishes boundaries within which it may legislate.

The American flag serves as a unique symbol of the ideas upon which America was founded. It is a national asset that helps preserve our unity, our freedom, and our liberty as Americans. This symbol represents our country's many hard-won freedoms, paid for with the lives of thousands of young men and women. The American people want their elected representatives to protect this cherished symbol.

Prior to the Supreme Court's ruling in 1989 in *Texas v. Johnson*, 48 States and the Federal Government had laws prohibiting desecration of the flag. Since that ruling, however, neither the States nor the Federal Government have been able to prohibit its desecration. In *Johnson*, the court, by a 5 to 4 vote, held that burning an American flag as part of a political demonstration was expressive conduct protected by the first amendment.

In response to *Johnson*, Congress overwhelmingly passed the Flag Protection Act of 1989, which amended the Federal flag statute to focus exclusively on the conduct of the actor, irrespective of any expressive message he or she might be intending to convey.

In 1990, the Supreme Court, in another 5 to 4 ruling, in *U.S. v. Eichman*, struck down that act as an infringement of expressive conduct protected by the first amendment, despite having also concluded that the statute was content-neutral. According to the Court, the Government's desire to protect the flag "is implicated only when the person's treatment of the flag communicates a message to others." Therefore, any flag desecration statute, by definition, will be related to the suppression of free speech, and, thus, run afoul of the first amendment.

Prohibiting physical desecration of the American flag is not inconsistent with first amendment principles. Until the *Johnson* and *Eichman* cases, punishing flag desecration had been viewed as compatible with both the letter and spirit of the first amendment, and both Thomas Jefferson and James Madison strongly supported government actions to prohibit flag desecration.

The first amendment does not grant individuals an unlimited right to engage in any form of desired conduct. Urinating in public or parading through the streets naked may both be done by a person hoping to communicate a message; yet both are examples of illegal conduct during which political debate or a robust exchange occurs.

□ 1245

As a result of the Court's misguided conclusions in *Johnson* and *Eichman*, however, flag desecration, or what Justice Rehnquist described as a "grunt,"